STATE OF MICHIGAN

COURT OF APPEALS

In re L COSELMAN, Minor.

UNPUBLISHED
October 20, 2015

No. 326497
Livingston Circuit Court
Family Division
LC No. 14-013254-NA

Before: BOONSTRA, P.J., and SAAD and HOEKSTRA, JJ.

PER CURIAM.

Respondent appeals from the circuit court's order that terminated her parental rights to the minor child LC pursuant to MCL 712A.19(b)(3)(g) (failure to provide proper care or custody), (3)(i) (previous termination of parental rights), and (3)(j) (reasonable likelihood of harm). For the reasons provided below, we affirm.

Respondent gave birth to LC while serving a prison sentence of 14 months to 15 years. She placed the child in the care of her parents. Several days after the child's birth, petitioner received a referral and opened an investigation. On December 11, 2014, petitioner filed a petition with the Family Division of the Livingston Circuit Court asking the court to exercise jurisdiction over the child and to terminate respondent's parental rights. After a same-day hearing on the petition before a hearing referee, the court adopted the referee's recommendation and issued an ex-parte order to take the minor into protective custody. Subsequent to a preliminary hearing, the child was placed with petitioner for care and supervision.

The facts adduced at the termination hearing are not in dispute. Respondent has a long history of substance abuse, and her drug of choice is heroin. She has an equally long history of criminal activity, often undertaken to obtain money to buy drugs. Since her early teen years, she has lived a cyclic pattern of substance abuse, criminal activity, and arrest. Where her sentences involved probation, she has invariably violated it, often by reoffending. She admitted that she has never successfully completed any of her probations. Respondent testified that she has tried to live independently but has not has not been able to do so for more than three or four months. The record shows a work history characterized by brief stints at various restaurants followed by long stretches of unemployment.

Respondent testified that she went to stay with a childhood friend in Mississippi in January 2014 in an effort to kick her heroin habit and avoid the consequences of pending charges. She returned to Michigan two months later and, although she claimed to be "clean," she

went to a treatment center and resumed attending Alcoholics Anonymous meetings because she planned to turn herself in and thought it "would look good for court."

Respondent said that she was currently participating in an intensive behavior modification and substance abuse treatment program that involves daily classes and, in the second phase of the program, would involve individual therapy. She said that after her release from prison, she would go to community placement through the Michigan Prisoner Re-entry Program. She planned to live apart from her family in order to avoid an environment that triggered her drug use. She anticipated getting a job at a restaurant and said that she wanted to learn how to take responsibility, live on her own, and pay her bills. She thought it would take at least three months to be in a position to provide proper care and custody for the child, but she did not want to pin herself down to a specific time frame. Respondent planned to stay sober by going to meetings and relying on her support network. She said she did not have a plan for what she would do if she relapsed with the child in her care but stated that she did not feel that any relapse would happen. Nevertheless, she admitted that relapse would always be a possibility for her and could be triggered by anything, and that given her pattern, any relapse would probably be accompanied by criminal activity.

Respondent argues on appeal that the trial court erred in finding clear and convincing evidence of one or more statutory grounds for termination of respondent's parental rights. The trial court's findings that a ground for termination has been established are reviewed under the clearly erroneous standard. MCR 3.977(K); *In re Rood*, 483 Mich 73, 90-91; 763 NW2d 587 (2009). A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake was made. *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010). Further, "regard is to be given to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it." *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989), citing MCR 2.613(C).

A trial court must terminate a respondent's parental rights if it finds that a statutory ground under MCL 712A.19b(3) has been established by clear and convincing evidence and that termination is in the children's best interests. *In re White*, 303 Mich App 701, 713; 846 NW2d 61 (2014). The trial court terminated respondent's parental rights under MCL 712A.19b(3)(g), (i), and (j).

Under MCL 712A.19b(3)(g), the court may terminate a parent's rights if it finds by clear and convincing evidence that the parent, "without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age." Respondent claims that grounds for termination under this subsection was not supported by clear and convincing evidence because she provided proper care and custody for the minor by placing him with her parents during her incarceration, and she was making progress in dealing with her substance abuse issues.

A parent's present inability to care for his or her children due to being incarcerated, on its own, is not grounds for termination. *In re Hudson*, 294 Mich App 261, 267; 817 NW2d 115 (2011). "Michigan traditionally permits a parent to achieve proper care and custody through placement with a relative." *In re Mason*, 486 Mich at 161 n 11. Respondent attempted to

provide for the child by placing him with his maternal grandmother (i.e., respondent's mother) and executing a power of attorney that would enable her to care for him. However, the trial court found that the minor's placement was inappropriate because petitioner deemed the maternal grandparents' home unsafe due to "an environment of substance abuse, domestic violence and criminality." This finding is well supported by the record. Thus, the trial court did not clearly err in finding that, by placing the child in the home of the maternal grandparents, respondent had not provided proper care and custody for him.

The second aspect of § 19b(3)(g) looks at whether there is a reasonable expectation that respondent will be able to provide proper care and custody for the child within a reasonable time, given his age. The trial court emphasized respondent's past history of interrelated substance abuse and criminal activity, her prior failed attempts at rehabilitation, and the fact that she was assessed at a high risk of drug abuse relapse and criminal reoffending. The court also questioned respondent's credibility by drawing attention to respondent's testimony that upon returning from Mississippi, she went to a treatment center, although she was "clean," because she thought it would look good in court. Noting that respondent was unable to identify any specific triggers or motivators for her substance abuse, the court concluded that respondent "has not benefitted from services, or internalized any substantial change which would lead this Court to conclude the child would be safe in her care."

The record supports the court's findings of fact and its conclusion that there is no reasonable expectation that respondent will be able to provide proper care and custody of the child within a reasonable time. Respondent's earliest release date is November 5, 2015, the day after the child's first birthday. She anticipates that it will take her at least three months to be in a position to care for the child. However, respondent has a lengthy history of drug addiction and has demonstrated an inability to remain drug free for more than a few months. When asked to identify the things that trigger her relapses, she testified that "it could be a sunny day, a nice day, . . . a cold day. It could be anything. I could use anything as an excuse to get high." This statement speaks of a highly unstable person who is capable of relapsing into drug abuse (and its associated criminal behavior) at any moment for any reason. She acknowledged having never lived independently for more than three or four months or having never learned how to take responsibility for herself or her life.

In sum, given respondent's tenacious drug habit and mindful of the trial court's long involvement with respondent and its special opportunity to assess her credibility, MCR 2.613(C), it cannot be said that the trial court clearly erred in concluding that there was no reasonable expectation that respondent would be able to provide proper care and custody for the child within a reasonable time.

Because only one statutory ground is required to support an order for the termination of parental rights, we need not address whether sufficient grounds existed to support termination

under MCL 712A.19b(3)(i)[1] or (j). See *In re Powers*, 244 Mich App 111, 119; 624 NW2d 472 (2000).

Respondent argues that the trial court erred in finding that termination of her parental rights was in the best interests of the child. "If the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child's best interests, the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made." MCL 712A.19b(5). "In deciding whether termination is in the child's best interest, the court may consider the child's bond to the parent, the parent's parenting ability, the child's need for permanency, stability, and finality, and the advantages of a foster home over the parent's home." *In re Olive/Metts*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012) (citations omitted). When making its best-interests determination, the court must consider whether the record as a whole proves by a preponderance of the evidence that termination is in the best interests of the child. *In re Moss*, 301 Mich App at 83.

The record contains no evidence of a parent-child bond between respondent and the child. Respondent gave birth to the child while serving a prison sentence, and she placed him with his maternal grandparents immediately. Once petitioner filed the termination petition, the court suspended respondent's parenting time. Her earliest scheduled release date is the day after the child's first birthday, and by then, he will have spent nearly a year in foster care.

The record shows that respondent's behavior follows a cyclical pattern of abusing substances, committing crimes to support her drug habit, and being charged and sentenced for those crimes. Where the sentence involves probation, respondent has invariably violated her probation, usually by reoffending. Consequently, respondent has been unable to keep a job for longer than five months.

The record submitted to this Court contains no evidence of respondent's prior living conditions. However, the trial court took judicial notice of its files from respondent's previous child protective proceeding and alluded to respondent's homelessness and instability. Respondent admitted that she has not lived on her own for longer than three or four months, and her testimony indicated that she lacks skills essential to maintaining a stable home, such as paying bills.

In sum, the court did not clearly err in determining that termination of respondent's parental rights is in the child's best interests. There is simply no reasonable expectation that respondent will be in a position to provide proper care and custody for him in a reasonable time,

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[1] We also note that instead of citing to § 19b(3)(i) in her brief on appeal, respondent mistakenly cited and argued in regard to § 19b(3)(c)(*i*). A party's failure to argue a necessary issue on appeal precludes any relief. See *City of Riverview v Sibley Limestone*, 270 Mich App 627, 638; 716 NW2d 615 (2006) ("[A] party's failure to brief an issue that necessarily must be reached precludes appellate relief."); *Derderian v Genesys Health Care Sys*, 263 Mich App 364, 381; 689 NW2d 145 (2004) (stating that when an appellant fails to dispute the basis of the trial court's ruling, this Court need not consider granting any relief).

given his age. Therefore, the child's need for permanency, stability, and finality, as well as the fact that he is thriving in foster care, weigh in favor of termination.

Affirmed.

/s/ Mark T. Boonstra
/s/ Henry William Saad
/s/ Joel P. Hoekstra